IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13929 of 1993

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT HOUSING BOARD

Versus

GUJARAT RAJYA GRUH NIRMAN KARAMCHARI SANGH

Appearance:
1. Special Civil Application No. 13929 of 1993
MR HS MUNSHAW for the Petitioner
MR BV LAKHIA for the Respondent

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 24/08/2004

ORAL JUDGEMENT

1. The Industrial Tribunal of Gujarat State at Ahmedabad in Reference (IT) No. 310 of 1981 passed an award that the respondent-employee, Natvarlal, shall be given promotion to the post of Architectural Assistant

from the post of Draftsman wef 05-07-1983 and to fix his salary in the pay-scale of Architectural Assistant with one increment and thereafter to give him benefits in the pay-scale that may be revised from time to time by its judgment dated 03-06-1993, which is directly and precisely under challenge in this writ petition at the instance of Gujarat Housing Board, mainly, on the ground that the Draftsman is not entitled to the promotion and the salary as that of an Architectural Assistant and, therefore, the impugned award is illegal.

2. With a view to appreciate the merits and challenge against the petition, a skeleton projection of the facts may be highlighted at the outset which are relevant and material for the main issue in focus.

3. The petitioner is Gujarat Housing Board, which is duly constituted under the provisions of Gujarat Housing Board Act and the respondent is Gujarat Rajya Gruh Nirman Karmachari Sangh, through which the right and the claim of one Draftsman, Natvarlal, was taken to the Industrial Tribunal, by a Reference under Section 10 (1) of the Industrial Disputes Act, 1947 ("Act", for short).

4. Mr.H.S.Munsha, learned Advocate for the petitioner-Board, has contended that the direction in the impugned award, for giving promotion to Draftsman to the post of Architectural Assistant wef 05-07-1983 on 03-06-1993, is illegal, as such direction cannot be issued in absence of any specific provision in the Rules and Regulations of the Board. This contention is seriously countered on behalf of the respondent.

5. The said contention advanced on behalf of the petitioner-Board by Mr. Munshal, learned Advocate, is not acceptable on the following grounds:

i. He has not produced the relevant Recruitment Rules and Service Conditions of the erstwhile Bombay Housing Board and instead, he has produced extract of one provision from the Service Rules and Conditions of Architechtural Assistant;

ii. Mr.Natvarlal, Draftsman, the beneficiary of the award, was inducted in the service during the period when Bombay Housing Board was in existence. The promotional provision and terms and conditions prevelant at the time of Bombay Housing Board are not placed on record, despite repeated adjournment given for the same to Mr.Munsha, learned Advocate for the petitioner.

As per the service conditions, Mr.Natvarlal, Draftsman, the contention that he is not entitled to be promoted to the post of Architectural Assistant, is not supportable by any evidence much less the documentary evidence.

iii. The respondent-Board has examined witnesses and has led evidence before the Industrial Tribunal. Mr.Natvarlal was also examined (Exh.11) which is very material and rightly appreciated by the Tribunal. It is very well explained in his evidence as to how he was entitled to be promoted and in which grade. It is also very clear from the evidence that the employees from the Engineering Department in the erstwhile Bombay Housing Board were liable to inter se transfer, as in both the Departments, from the post of Tracer to Draftsman, same and one cadre was considered and that there was no difference in the duties of the Head Draftsman and the Draftsman. It is also very clear from his evidence that he had passed two Departmental Examinations and, therefore, he was getting the grade of Rs.425-800 as a Draftsman, though he had not passed S.S.C.Examination, only on the ground of passing I.T.I.

6. On behalf of the petitioner-Board, one, Mr.D.R.Desai, is examined at Exh.25. Following aspects have emerged indisputably from evidence:

i. He has not been able to show as to when the Recruitment Rules were made and were brought into force.

ii. Mr. Natubhai Shukla was, initially, employed with Bombay Housing Board.

iii. On vital questions, he has not been able to answer for want of information or ignorance or partionship during the course of examination before the Tribunal.

iv. Architectural Assistant post is Class-III post and at the same time, Tracer, Assistant Draftsman and Draftsman posts are also Class-III posts.

v. What were the educational qualifications and when it came to be prescribed for the promotional post of Architectural Assistant from the feeder cadre, is also not known to him.

7. It is found from the record that even Gujarat Housing Board, which is the successor of the Bombay Housing Board, has given the concession for the promotion from the post of Draftsman to Assistant Architectural Draftsman by relaxing educational qualification. A very interesting point, which requires to be taken into account at this juncture, is that even during the time of Bombay Housing Board, the Bombay Government, by a Resolution dated 09-12-1959, had taken a decision to give promotion from the cadre from the post of Draftsman to the post of Architectural Assistant on 50:50 basis, which means, 50% by promotion and 50% by Direct Recruitment.

8. Nothing has been, successfully, shown from the record that the question in this writ petition voiced by the petitioner is, in any way, perverse,illegal or without any evidence. It is not the quality of the decision but the decision-making process that is the concern of the Court. If decision-making process is not in any way affected or influenced by any extraneous consideration and if the principles of natural justice, fair play, reasonableness and rationality are observed, the Writ Court cannot reappreciate the evidence and the ultimate conclusion based on facts and evidence. This Court does not sit as an Appellate Authority when the domestic Tribunal proceedings are conducted in a defined and prescribed parameters and when celebrated principles of natural justice are observed. This Court cannot interfere even if different perception or possible view is likely to be taken by reading the evidence or the material on record. Thus, the jurisdictional sweep and scope of the Writ Court is very much circumscribed.

9. Nothing else has been, also, successfully, spelt out or even pointed out which would even remotely warrant the interference of this Court. The petition, therefore, deserves to be rejected. Accordingly, it is rejected. Rule discharged. No costs.

(J. N. BHATT, J.)
/shamnath